

**EPA Region 5 Records Ctr.**



**264107**

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November 24, 2003

**VIA CERTIFIED MAIL  
RETURN RECEIPT REQUESTED**

Mr. Jerome Kujawa, Assistant Regional  
Counsel (SE-5J)  
U.S. Environmental Protection Agency  
77 West Jackson Boulevard  
Chicago, IL 60604-3590

**RE: Response to Request for Information Made Pursuant to Section  
104(e) of CERCLA, IWI Inc. Site, 7738 West 61st Place, Summit,  
Illinois (the "Site")**

Dear Mr. Kujawa:

As you know, our firm represents the former Mautz Paint Company ("MPC") with respect to the above matter. We discussed U.S. EPA's Requests for Information ("Requests") regarding the above-referenced Site on October 24, 2003 and, as confirmed by the attached copy of my email, on behalf of U.S. EPA you granted an extension of time to respond to the Requests through and including December 5, 2003. These responses will be supplemented if additional responsive information is discovered.

**PRELIMINARY STATEMENT AND GENERAL OBJECTIONS**

MPC formerly operated a retail paint store at 7350 South Archer Road in Justice, Illinois. During the times relevant hereto, this retail location was owned and operated by MPC. The retail location continues in operation, but is now owned by The Sherwin Williams Company ("SW") of Cleveland, Ohio. On November 7, 2001, SW purchased substantially all of the assets of MPC, including this retail location. MPC never manufactured any coatings at the Justice, Illinois location. All coatings were manufactured at MPC's only manufacturing facility located in Madison, Wisconsin.

Upon closing of the transaction with SW described above, all corporate records of MPC were transferred to SW. Additionally, the historic employees of MPC at the Justice, Illinois retail store became employees of SW. Based on our conversations with SW's in-house counsel Allen Danzig, SW has or will research those historic corporate

records and has interviewed long-time retail store employees to respond to the Requests. We understand that SW will be submitting a response to the Requests based on that investigation.

Based on the information provided by SW as a result of such investigation, it appears that MPC historically sold IWI/Iltasca paint, a finished product, as a retail customer and did not have any relationship with IWI as a disposal, recycling, or container refurbishing operation. As such, MPC has no liability in this matter because it did not generate to or arrange for the disposal of hazardous substances at the Site (42 U.S.C. § 9607(a)) and given the application of the "useful product doctrine". *A&W Smelter & Refiners, Inc. v. U.S. EPA*, 146 F. 3d 1107, 1112 (U.S. Ct. App. 9th Cir. 1998).

Notwithstanding the foregoing, MPC objects to the Requests to the extent they seek information or documents protected by the attorney-client privilege or the attorney work-product doctrine. MPC further objects to the Requests to the extent they seek information concerning hazardous substances used, generated, produced, or otherwise handled by MPC that were not transported to or arranged for disposal at, by or through the Site in that such requests are overbroad, overreaching, irrelevant, and beyond the scope of U.S. EPA's statutory authority provided by 42 U.S.C. § 9604(e)(2). Since the "vessel" or "facility" at issue is the IWI, Inc. Site located in Summit, Illinois (see, definition of "Site" in the Requests) then all Requests and MPC's responses thereto relate solely to that "vessel" or "facility" defined in the Requests as the Site.

Moreover, according to our discussions, we have limited our inquiry and our responses to the time period of 1975 through and including 1999. As such, to the extent the Requests seek information concerning hazardous substances or materials prior to 1975 or after 1999, such Request is overbroad, unduly burdensome, not reasonably calculated to lead to the discovery of relevant information with respect to the Site, and otherwise beyond the Agency's statutory authority provided for in 42 U.S.C. § 9604(e)(2).

MPC provides these responses subject to and without waiver of any and all rights, defenses, or privileges applicable or potentially applicable hereto. These defenses include, but are not limited to: i) the *de micromis* statutory exemption at 42 U.S.C. § 9607(o); ii) that MPC is not a "covered person" under 42 U.S.C. § 9607(a); and the "useful product doctrine" cited above. Without waiver of any of the foregoing rights, privileges or defenses, and subject to the general objections above (and specific objections below) we hereby respond as follows:

- 1. Identify all persons consulted in the preparation of the answers to these Information Requests.**

*RESPONSE 1:* MPC objects to this request to the extent it seeks information which is protected by the attorney-client privilege and attorney work-product doctrine. Without waiving the foregoing privileges, MPC responds as follows:

The Sherwin-Williams Company  
101 Prospect Avenue, NW  
Cleveland, OH 44115-1075

Mr. Bernard F. Mautz  
10 Oakman Branch Road  
Hilton Head, SC 29928

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| <p><b>2. Identify all documents consulted, examined, or referred to in the preparation of the answers to these Requests, and provide copies of all such documents.</b></p> |
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*RESPONSE 2:* MPC objects to this request to the extent it seeks information which is confidential, proprietary business information, protected by the attorney-client or attorney work-product privileges, and confidential personnel information. Without waiving the foregoing objections, MPC responds as follows:

MPC consulted no documents because all corporate records of MPC are in the care, custody and control of SW. See Preliminary Statement and Objections.

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| <p><b>3. If you have reason to believe that there may be persons able to provide a more detailed or complete response to any Information Request or who may be able to provide additional responsive documents, identify such person.</b></p> |
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*RESPONSE 3:* MPC objects to this request in that it is vague and confusing as to what the agency means by "reason to believe" and to the extent that it requests MPC to speculate as to the knowledge of parties beyond its care, custody or control. Without waiving the foregoing objections, MPC responds that since the historic corporate records of MPC are in the care, custody and control of SW and the Justice, Illinois retail store employees are employees of SW, SW.

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| <p><b>4. List the U.S.EPA Identification Numbers for the Respondent.</b></p> |
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*RESPONSE 4:* See Preliminary Statement and Objections. See also, Response 3, above.

- 5. Identify the acts or omissions of any persons, other than your employees, contractors, or agents, that may have caused the release or threat of release of hazardous substances, pollutants, or contaminants, and damages resulting therefrom.**

*RESPONSE 5:* MPC objects to this request to the extent it requires MPC to form a legal conclusion regarding what "acts or omissions" and "caused" a release or threat of release of hazardous substances. MPC objects to this request to the extent it requests information regarding the knowledge or conduct of parties beyond MPC's care, custody or control. Without waiving any of the foregoing objections, and responding only with regard to the Site as defined herein, MPC responds that it has no information responsive to this request.

- 6. Identify all persons having knowledge or information about the generation, transportation, treatment, disposal, or other handling of hazardous substances by you, your contractors, or by prior owners and operators.**

*RESPONSE 6:* MPC objects to this request to the extent it requests information regarding the knowledge or conduct of parties beyond MPC's care, custody or control. MPC further objects to this Request because the question is vague as it does not identify any specific site. Without waiving the preserved objections and responding only with regard to the Site as defined herein, See Preliminary Statement and General Objections and Response No. 3.

- 7. Did you ever use, purchase, store, treat, dispose, transport, or otherwise handle any hazardous substances or materials? If the answer to the preceding question is anything but an unqualified "no", identify:**

- a) The chemical composition, characteristics, physical state (e.g., solid, liquid) of each hazardous substance;**
- b) Who supplied you with such hazardous substances;**

- c) **How such hazardous substances were used, purchased, generated, stored, treated, transported, disposed or otherwise handled by you;**
- d) **When such hazardous substances were used, purchased, generated, stored, treated, transported, disposed or otherwise handled by you;**
- e) **Where such hazardous substances were used, purchased, generated, stored, treated, transported, disposed or otherwise handled by you; and**
- f) **The quantity of such hazardous substances used, purchased, generated, stored, treated, transported, disposed or otherwise handled by you.**

*RESPONSE 7:* MPC objects to this request as being overbroad, overreaching irrelevant and *ultra vires* to the extent it requests information regarding MPC's use, purchase, generation, storage, treatment, transportation, disposal or other handling of hazardous substances or materials either (i) before 1979 or after 1999 or (ii) not bound for the Site. See Preliminary Statement and Objections and Response No. 3.

<b>8. Provide copies of all income tax returns sent to the Federal Internal Revenue Service in the last five years.</b>
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MPC objects to this Request as it seeks confidential and sensitive financial information not relevant to this matter given the information contained in the Preliminary Statement and General Objections and Response No. 3.

<b>9. If Respondent is a Corporation, response to the following requests:</b>
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- a) **Provide a copy of the Articles of Incorporation and By-Laws of the Respondent.**
- b) **Provide Respondent's audited financial statements for the past five fiscal years, including, but not limited to those filed with the Internal Revenue Service. If audited financial statements are not made available, please state the reasons that they are not available, and provide the financial statements that management would review at the conclusion of each fiscal year.**

- c) **Identify all of Respondent's current assets and liabilities and the persons who currently own or are responsible for such assets and liabilities.**
- d) **Provide a list of any investments that the Corporation may own. For example, any ownership in stock should list Corporate name, number of shares owned, and price at a current specific date. Ownership of real estate should itemize property location, type of property (land, office building, factory, etc.), size of property, purchase price, and current market valuation. These schedules should agree with financial statement presentations.**

*RESPONSE 9:* MPC objects to these requests as irrelevant and *ultra vires* to the extent the requests seek information pertaining to MPC's ability to pay for or to perform a cleanup at the Site because MPC is not a party liable pursuant to 42 U.S.C. § 9607(a). See Preliminary Statement and General Objections and Response No. 3.

**10. If Respondent is a Partnership, provide copies of the Partnership Agreement.**

*RESPONSE 10:* MPC is not a partnership.

**11. If Respondent is a Trust, provide all relevant agreements and documents to support this claim.**

*RESPONSE 11:* MPC is not a trust.

**12. Identify all persons, including yourself, who may have arranged for disposal or treatment or arranged for transportation for disposal or treatment of totes, containers, drums, barrels, pails, or waste materials, including hazardous substances, at the Site or to the Site or for transshipment through the Site. In addition, identify the following:**

- a) **The persons with whom you or such other persons made such arrangements, including, but not limited to [provide list of transporters];**
- b) **Every date on which such arrangements took place;**

- c) For each transaction, the nature of the waste material or hazardous substance, including the chemical content, characteristics, physical state (e.g., solid, liquid) and the process for which the substance was used or the process which generated the substance which may have been stored in totes, container, drums, barrels, or pails;
- d) The owner of the totes, containers, drums, barrels, pails, or waste materials or hazardous substances so accepted or transported;
- e) The quantity of the totes, containers, drums, barrels, pails or waste materials or hazardous substances involved (weight or volume) in each transaction and the total quantity for all transactions;
- f) All tests, analyses, and analytical results concerning the totes, containers, drums, barrels, or waste materials;
- g) The person(s) who selected the Site or transshipment of totes, containers, drums, barrels, pails, or waste materials through the Site as the place to which the waste materials or hazardous substances were to be transported;
- h) The amount paid in connection with each transaction, the method of payment, and the identity of the person from whom payment was received;
- i) Where the person identified in g. above intended to have such totes, containers, drums, barrels, pails, hazardous substances or waste materials transported and all evidence of this intent;
- j) Whether the totes, containers, drums, barrels, pails, waste materials or hazardous substances involved in each transaction were transshipped through, or were stored or held at, any intermediate site prior to final treatment or disposal;
- k) What was actually done to the totes, containers, drums, barrels, pails, or waste materials or hazardous substances once they were brought to the Site;
- l) The final disposition of each of the totes, containers, drums, barrels, pails, or waste materials or hazardous substances involved in such transactions;
- m) The measures taken by you to determine the actual methods, means, and site of treatment or disposal of the totes, containers, drums,

**barrels, pails, or waste material and hazardous substances involved in each transaction;**

- n) The type and number of totes, containers, drums, barrels, or pails in which the waste materials or hazardous substances were contained when they were accepted for transport, and subsequently until they were deposited at the Site, and all markings on such totes, containers, drums, barrels, pails or containers;**
- o) The price paid for transport or disposal or treatment of each tote, container, drum, barrel, pail, waste material and hazardous substance;**
- p) All documents containing information responsive to a) – o) above, or in lieu of identification of all relevant documents, provide copies of all such documents;**
- q) All persons with knowledge, information, or documents responsive to a) – p) above.**

*RESPONSE 12:* MPC objects to this request to the extent it requests information regarding the knowledge or conduct of parties beyond MPC's care, custody or control. Further, MPC objects to this Request as being overbroad, overreaching, irrelevant and *ultra vires* to the extent it seeks information concerning arrangements for the treatment, storage or disposal or transportation or transshipment of hazardous substances, pollutants, contaminants or materials either (i) before 1979 or after 1999 or (ii) not involving the Site. Without waiving any of the reserved objections, See Preliminary Statement and Objections and Response No. 3.

Very truly yours,

**MICHAEL BEST & FRIEDRICH LLP**

  
David A. Crass

DAC:tml

cc: Mrs. Mila V. Bensing  
Emergency Enforcement & Support Section (SE-5J)

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**MICHAEL BEST  
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*Attorneys at Law*

**RECEIVED**  
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SECTION**

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